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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

OS

DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CARLOS RIOS,  
CDCR #E-52249,

Plaintiff,

vs.

D. PARAMO, R. BLAHNICK;  
K. BALAKIAN; B. CROTTS;  
B. MILLUM; A. HERNANDEZ;  
R. OLSON; J. RAMIREZ,

Defendants.

Civil No. 13cv2455 WQH (JMA)

**ORDER:**

**(1) GRANTING PLAINTIFF'S  
MOTION TO PROCEED  
IN FORMA PAUPERIS  
(ECF Doc. No. 2)**

**AND**

**(2) DISMISSING COMPLAINT  
FOR FAILING TO STATE A  
CLAIM PURSUANT TO  
28 U.S.C. §§ 1915(e)(2)  
AND 1915A(b)**

Carlos Rios ("Plaintiff"), currently incarcerated at Richard J. Donovan Correctional Facility ("RJD"), in San Diego, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983.

Plaintiff alleges Defendants have violated his rights to access to the courts by limiting his access to RJD's prison library on an "ongoing basis," and have retaliated against him for seeking library access by denying his repeated prison grievances, failing to properly respond to his complaints, and conspiring to "cover up" the unlawful acts of

1 subordinates. *See* Compl. (ECF Doc. No. 1) at 4-11. Plaintiff seeks declaratory and  
 2 injunctive relief as well as compensatory and punitive damages. *Id.* at 12-13.

3 Plaintiff has not prepaid the \$400 statutory and administrative civil filing fees  
 4 required by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma*  
 5 *Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF Doc. No. 2).

# I.

## PLAINTIFF’S MOTION TO PROCEED IFP

8 All parties instituting any civil action, suit or proceeding in a district court of the  
 9 United States, except an application for writ of habeas corpus, must pay a \$350 filing fee.  
 10 *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite the plaintiff’s failure to prepay  
 11 the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a).  
 12 *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the plaintiff  
 13 is a prisoner and is granted leave to proceed IFP, he nevertheless remains obligated to  
 14 pay the entire fee in installments, regardless of whether his action is ultimately  
 15 dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847  
 16 (9th Cir. 2002).

17 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act  
 18 (“PLRA”), a prisoner seeking leave to proceed IFP must also submit a “certified copy  
 19 of the trust fund account statement (or institutional equivalent) for . . . the six-month  
 20 period immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2);  
 21 *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account  
 22 statement, the Court must assess an initial payment of 20% of (a) the average monthly  
 23 deposits in the account for the past six months, or (b) the average monthly balance in the  
 24 account for the past six months, whichever is greater, unless the prisoner has no assets.  
 25 *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of

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27 <sup>1</sup> Civil litigants filing actions on or after May 1, 2013, must pay an additional  
 28 administrative fee of \$50. *See* 28 U.S.C. § 1914(a), (b); Judicial Conference Schedule of Fees,  
 District Court Misc. Fee Schedule (eff. May 1, 2013). However, the additional \$50  
 administrative fee is waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 the prisoner must collect subsequent payments, assessed at 20% of the preceding  
2 month's income, in any month in which the prisoner's account exceeds \$10, and forward  
3 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.  
4 § 1915(b)(2).

5 In support of his IFP Motion, Plaintiff has submitted certified copies of his trust  
6 account statements pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2.  
7 *Andrews*, 398 F.3d at 1119. The Court has reviewed Plaintiff's trust account statements,  
8 as well as the prison certificate issued by a senior accounting officer at RJD which  
9 verifies his account history and available balances. Plaintiff's statements show an  
10 average monthly balance of \$231.56, and average monthly deposits of \$43.34, but an  
11 available balance of zero in his account at the time it was submitted to the Court for  
12 filing. Based on this financial information, the Court GRANTS Plaintiff's Motion to  
13 Proceed IFP (ECF Doc. No. 2) and assesses an initial partial filing fee of \$46.31 pursuant  
14 to 28 U.S.C. § 1915(b)(1).

15 However, the Secretary of the California Department of Corrections and  
16 Rehabilitation, or his designee, shall collect this initial fee only if sufficient funds in  
17 Plaintiff's account are available at the time this Order is executed pursuant to the  
18 directions set forth below. *See* 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event  
19 shall a prisoner be prohibited from bringing a civil action or appealing a civil action or  
20 criminal judgment for the reason that the prisoner has no assets and no means by which  
21 to pay the initial partial filing fee."); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C.  
22 § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's IFP case based  
23 solely on a "failure to pay ... due to the lack of funds available to him when payment is  
24 ordered."). The remaining balance of the \$350 total owed in this case shall be collected  
25 and forwarded to the Clerk of the Court pursuant to the installment payment provisions  
26 set forth in 28 U.S.C. § 1915(b)(1).

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28 ///

## II.

### INITIAL SCREENING PER 28 U.S.C. §§ 1915(e)(2)(b)(ii) AND 1915A(b)(1)

#### A. Standard of Review

Notwithstanding IFP status or the payment of any partial filing fees, the PLRA also obligates the Court to review complaints filed by all persons proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these provisions of the PLRA, the Court must sua sponte dismiss complaints, or any portions thereof, which are frivolous, malicious, fail to state a claim, or which seek damages from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

All complaints must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” FED.R.CIV.P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining whether a complaint states a plausible claim for relief [is] ... a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* The “mere possibility of misconduct” falls short of meeting this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

“When there are well-pleaded factual allegations, a court should assume their veracity, and then determine whether they plausibly give rise to an entitlement to relief.” *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (“[W]hen determining whether a complaint states a claim, a court must accept as true all allegations of material fact and must construe those facts in the light most favorable to

the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

However, while the court “ha[s] an obligation where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not, in so doing, “supply essential elements of claims that were not initially pled.” *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). “Vague and conclusory allegations of official participation in civil rights violations are not sufficient to withstand a motion to dismiss.” *Id.*

### **B. 42 U.S.C. § 1983**

“Section 1983 creates a private right of action against individuals who, acting under color of state law, violate federal constitutional or statutory rights.” *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred.” *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (internal quotation marks and citations omitted). “To establish § 1983 liability, a plaintiff must show both (1) deprivation of a right secured by the Constitution and laws of the United States, and (2) that the deprivation was committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

### **C. Plaintiff’s Allegations**

Plaintiff claims that Defendant Blahnick, who is RJD’s Facility C Librarian, denied him “meaningful access to the court” beginning in September 2012 by limiting his access to the law library, denying him “PLU” status pursuant to 15 CAL. CODE REGS., § 3123(b),<sup>2</sup> and failing to comply with confidentiality procedures governing photocopy

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<sup>2</sup> “Inmates who have established court deadlines may apply for Priority Legal User (PLU) status to the prison law libraries. Inmates who are granted PLU status based on their applications shall receive higher priority to prison law library resources than other inmates.” Cal. Code Regs., tit. 15 § 3122(b) (2011).

1 practices. *See* Compl. at 5, 7; Pl's Ex. B (ECF Doc. No. 1) at 21. Plaintiff further  
 2 alleges that the remaining Defendants, all "supervisors" or inmate appeal officials, tasked  
 3 with reviewing his administrative grievances, conspired and retaliated against him for  
 4 seeking redress by improperly denying and/or processing his grievances and "failing to  
 5 stop or fix the wrong[s]" of their subordinate officers. *See* Compl. at 3, 5-11.

#### 6 **D. Access to Courts Claims**

7 Prisoners do "have a constitutional right to petition the government for redress of  
 8 their grievances, which includes a reasonable right of access to the courts." *O'Keefe v.*  
 9 *Van Boening*, 82 F.3d 322, 325 (9th Cir. 1996); *accord Bradley v. Hall*, 64 F.3d 1276,  
 10 1279 (9th Cir. 1995). In *Bounds v. Smith*, 430 U.S. 817 (1977), the Supreme Court held  
 11 that "the fundamental constitutional right of access to the courts requires prison  
 12 authorities to assist inmates in the preparation and filing of meaningful legal papers by  
 13 providing prisoners with adequate law libraries or adequate assistance from persons who  
 14 are trained in the law." *Id.* at 828. To establish a violation of the right to access to the  
 15 courts, however, a prisoner must allege facts sufficient to show that: (1) a non-frivolous  
 16 legal attack on his conviction, sentence, or conditions of confinement has been frustrated  
 17 or impeded, and (2) he has suffered an actual injury as a result. *Lewis v. Casey*, 518 U.S.  
 18 343, 353-55 (1996). An "actual injury" is defined as "actual prejudice with respect to  
 19 contemplated or existing litigation, such as the inability to meet a filing deadline or to  
 20 present a claim." *Id.* at 348; *see also Vandelft v. Moses*, 31 F.3d 794, 796 (9th Cir.  
 21 1994); *Sands v. Lewis*, 886 F.2d 1166, 1171 (9th Cir. 1989); *Keenan v. Hall*, 83 F.3d  
 22 1083, 1093 (9th Cir. 1996).

23 Here, Plaintiff fails to allege that Defendant Blahnick's refusal to grant him PLU  
 24 status or failure to comply with confidentiality photocopy procedures on any particular  
 25 occasion precluded his pursuit of a non-frivolous direct or collateral attack upon either  
 26 his criminal conviction or sentence or the conditions of his current confinement. *See*  
 27 *Lewis*, 518 U.S. at 355 (right to access to the courts protects only an inmate's need and  
 28 ability to "attack [his] sentence[], directly or collaterally, and ... to challenge the



1 conditions of [his] confinement.”). In addition, Plaintiff must also, but has failed to,  
 2 describe the non-frivolous nature of the “underlying cause of action, whether anticipated  
 3 or lost.” *Christopher v. Harbury*, 536 U.S. 403, 415 (2002).

4 In short, unless Plaintiff can show that “a complaint he prepared was dismissed,”  
 5 or that he was “so stymied” by Defendant Blahnick’s actions that “he was unable to even  
 6 file a complaint,” direct appeal, or petition for writ of habeas corpus that was not  
 7 “frivolous,” his access to courts claim must be dismissed. *Lewis*, 518 U.S. at 351;  
 8 *Christopher*, 536 U.S. at 416 (“like any other element of an access claim[,] ... the  
 9 predicate claim [must] be described well enough to apply the ‘nonfrivolous’ test and to  
 10 show that the ‘arguable’ nature of the underlying claim is more than hope.”).

#### 11 **E. Administrative Grievance Processing & Respondeat Superior Claims**

12 As to the remaining Defendants, Warden Paramo, Associate Warden Hernandez,  
 13 Education Supervisors Balakian and Crotts, Academic Instruction Supervisor Millum,  
 14 and RJD Appeals Coordinators Olson and Ramirez, Plaintiff’s claims center on their  
 15 failure to either correct and/or properly supervise Blahnick via CDC 602 inmate  
 16 grievance procedures. *See* Compl. at 5-11. Plaintiff alleges all these Defendants at one  
 17 time or another “failed to stop or fix the wrong[s],” were responsible for abuses [they]  
 18 kn[e]w were being committed by their subordinates,” and “cover[ed] up misconduct.”  
 19 *Id.* at 2-3, 10.

20 First, a prisoner has no constitutional right to an effective grievance or appeal  
 21 procedure, however. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann*  
 22 *v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988); *see also, e.g., George v. Smith*, 507 F.3d  
 23 605, 609-10 (7th Cir. 2007) (holding that only persons who cause or participate in civil  
 24 rights violations can be held responsible and that “[r]uling against a prisoner on an  
 25 administrative complaint does not cause or contribute to the violation”); *Shehee v.*  
 26 *Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999) (holding that prison officials whose only roles  
 27 involved the denial of the prisoner’s administrative grievances could not be held liable  
 28 under § 1983); *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993) (“[A prison]

grievance procedure is a procedural right only, it does not confer any substantive right upon the inmates.”); *Jimenez v. Hitfield*, 2012 WL 244149 at \*6 (E.D. Cal. Jan. 25, 2012) (“Because there is no right to any particular grievance process, plaintiff cannot state a cognizable civil rights claim for a violation of his due process rights based on allegations that prison officials ignored or failed to properly process grievances.”); *Wright v. Shapirshteyn*, 2009 WL 361951 at \*3 (E.D. Cal. Feb. 12, 2009) (noting that “where a defendant’s only involvement in the allegedly unconstitutional conduct is the denial of administrative grievances, the failure to intervene on a prisoner’s behalf to remedy alleged unconstitutional behavior does not amount to active unconstitutional behavior for purposes of § 1983”); *Velasquez v. Barrios*, 2008 WL 4078766 at \*11 (S.D. Cal. Aug. 29, 2008) (“An official’s involvement in reviewing a prisoner’s grievances is an insufficient basis for relief through a civil rights action.”).

Second, to the extent Plaintiff seeks to sue Paramo, Balakian, Crotts, Millum, Hernandez, Olson or Ramirez based on their “legal[] responsib[ility] for the abuses committed by their subordinates, Compl. at 2-3, his Complaint, fails to “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). “Because vicarious liability is inapplicable to ... § 1983 suits, a plaintiff must plead that each government-official defendant, through the official’s own individual actions, has violated the Constitution.” *Id.* at 676; *see also Jones v. Community Redevelopment Agency of City of Los Angeles*, 733 F.2d 646, 649 (9th Cir. 1984) (even pro se plaintiff must “allege with at least me degree of particularity overt acts which defendants engaged in” in order to state a claim). Thus, in order to avoid the respondeat superior bar, Plaintiff must include sufficient “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,” *Iqbal*, 556 U.S. at 678, including personal acts by each individual defendant which show a direct causal connection to a violation of specific constitutional rights. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).



1 As currently pleaded, however, Plaintiff's Complaint sets forth only "naked  
 2 assertion[s] devoid of 'further factual enhancement'" sufficient to state a plausible  
 3 entitlement to relief against Defendants Paramo, Balakian, Crotts, Millum, Hernandez,  
 4 Olson and Ramirez. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557).  
 5 Therefore, the Court finds Plaintiff has also failed to state a claim against Paramo,  
 6 Balakian, Crotts, Millum, Hernandez, Olson and Ramirez pursuant to 28 U.S.C.  
 7 § 1915(e)(2) and § 1915A(b). *See Lopez*, 203 F.3d at 1126-27; *Resnick*, 213 F.3d at 446.

#### 8 **F. Retaliation & Conspiracy**

9 Throughout his Complaint, Plaintiff also makes reference to "retaliatory bias" and  
 10 conspiracies to deny him the "full benefit of the law." *See* Compl. at 5-6, 8-9, 10.

11 "Within the prison context, a viable claim of First Amendment retaliation entails  
 12 five basic elements: (1) [a]n assertion that a state actor took some adverse action against  
 13 an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4)  
 14 chilled the inmate's exercise of his First Amendment rights, and (5) the action did not  
 15 reasonably advance a legitimate correctional goal. *See, e.g., Resnick v. Hayes*, 213 F.3d  
 16 443, 449 (9th Cir. 2000); *Barnett [v. Centoni]*, 31 F.3d [813] 815-16 [(9th Cir. 1994)]."  
 17 *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted).

18 As currently pleaded, Plaintiff's Complaint fails to include "sufficient factual  
 19 matter" which identifies any particular adverse action was taken against him *because* he  
 20 exercised any constitutional right. *See Iqbal*, 556 U.S. at 678; *Soranno's Gasco, Inc. v.*  
 21 *Morgan*, 874 F.2d 1310, 1314 (9th Cir. 1989) (plaintiff must show that the protected  
 22 conduct was a "substantial" or "motivating" factor in the defendant's decision to act);  
 23 *Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977). Plaintiff  
 24 has further fail to allege facts sufficient to show that any Defendants' action failed to  
 25 advance a legitimate correctional goal such as "preserving institutional order and  
 26 discipline." *Barnett*, 31 F.3d at 815-16.

27 Plaintiff's conspiracy claims also fail to include sufficient factual content to permit  
 28 the Court "to draw the reasonable inference that [any] defendant is liable" under § 1983.

1 *Iqbal*, 556 U.S. at 678. To support a claim of a conspiracy under § 1983, Plaintiff's  
 2 Complaint must contain sufficient factual matter to show “(1) the existence of an  
 3 express or implied agreement among the defendant officers to deprive him of his  
 4 constitutional rights, and (2) an actual deprivation of those rights resulting from that  
 5 agreement.” *Avalos v. Baca*, 596 F.3d 583, 592 (9th Cir. 2010) (quoting *Ting v. United*  
 6 *States*, 927 F.2d 1504, 1512 (9th Cir. 1991)).

7 As currently pleaded, Plaintiff's Complaint fails to sufficiently allege either a  
 8 plausible factual basis to show either an express or implied agreement to deny his  
 9 constitutional rights, nor any “further factual enhancement” to show an “actual  
 10 deprivation” of any violation of any constitutional right. *Iqbal*, 556 U.S. at 678; *Avalos*,  
 11 596 F.3d at 592.

12 For all these reasons, the Court finds that Plaintiff has failed to state a plausible  
 13 claim for relief against any person subject to suit pursuant to 42 U.S.C. § 1983. *Iqbal*,  
 14 556 U.S. at 678. Therefore, his Complaint is subject to sua sponte dismissal pursuant to  
 15 28 U.S.C. §§ 1915(e)(2) and 1915A(b). See 28 U.S.C. § 1915(e)(2); § 1915A(b); *Lopez*,  
 16 203 F.3d at 1126-27; *Rhodes*, 621 F.3d at 1004. Because Plaintiff is proceeding in pro  
 17 se, however, the Court having now provided him with “notice of the deficiencies in his  
 18 complaint,” will also provide him an opportunity to “effectively” amend. See *Akhtar v.*  
 19 *Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258,  
 20 1261 (9th Cir. 1992)).

### 21 III.

#### 22 CONCLUSION AND ORDER

23 Good cause appearing, **IT IS HEREBY ORDERED** that:

24 1. Plaintiff's Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) (ECF  
 25 Doc. No. 2) is GRANTED.

26 2. The Secretary of the California Department of Corrections and  
 27 Rehabilitation, or his designee, shall collect from Plaintiff's prison trust account the  
 28 initial filing fee assessed in this Order, and shall forward the remainder of the \$350 filing

1 fee owed by collecting monthly payments from Plaintiff's account in an amount equal  
 2 to twenty percent (20%) of the preceding month's income and shall forward payments  
 3 to the Clerk of the Court each time the amount in the account exceeds \$10 in accordance  
 4 with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED  
 5 BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION.

6 3. The Clerk of the Court is directed to serve a copy of this Order on Jeffrey  
 7 A. Beard, Secretary, California Department of Corrections and Rehabilitation, P.O. Box  
 8 942883, Sacramento, California, 94283-0001.

9 **IT IS FURTHER ORDERED** that:

10 4. Plaintiff's Complaint is DISMISSED without prejudice for failing to state  
 11 a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(b) and 1915A(b). However, Plaintiff is  
 12 GRANTED forty five (45) days leave from the date this Order is filed in which to file a  
 13 First Amended Complaint which cures all the deficiencies of pleading noted above.  
 14 Plaintiff's Amended Complaint must be complete in itself without reference to his  
 15 original pleading. *See* S.D. CAL. CIVLR 15.1; *Hal Roach Studios, Inc. v. Richard Feiner*  
 16 *& Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) ("[A]n amended pleading supersedes  
 17 the original."); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (citation omitted) ("All  
 18 causes of action alleged in an original complaint which are not alleged in an amended  
 19 complaint are waived.").<sup>3</sup>

20 DATED 3/25/14

21   
 22 HON. WILLIAM O. HAYES  
 23 United States District Judge

24 <sup>3</sup> Finally, Plaintiff is cautioned that should his Amended Complaint still fail to state a  
 25 claim upon which relief may be granted, it may be dismissed without further leave to amend and  
 26 may hereafter be counted as a "strike" against him pursuant to 28 U.S.C. § 1915(g). *See*  
 27 *McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996). "Pursuant to § 1915(g), a prisoner  
 28 with three strikes or more cannot proceed IFP." *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th  
 Cir. 2005). "Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which  
 were dismissed on the ground that they were frivolous, malicious, or failed to state a claim," *id.*  
 (internal quotations omitted), "even if the district court styles such dismissal as a denial of the  
 prisoner's application to file the action without prepayment of the full filing fee." *O'Neal v.*  
*Price*, 531 F.3d 1146, 1153 (9th Cir. 2008).